

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

TIMOTHY ROBERTSON, individually,

Plaintiff,

vs.

KITSAP COUNTY, a Municipal Corporation
organized under the laws of the State of
Washington; CONMED, INC., a Foreign
Corporation; ARLEN JOHNSON, A.R.N.P.;
BARBARA MULL, R.N.; SUE STEVENS,
R.N.; and BRUCE KALER, M.D.,

Defendants.

No. 15-cv-05422-RBL-DWC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. It does not presumptively entitle parties to file confidential information under seal.

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1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 A. Confidential information in Defendants' respective personnel files. This
5 designation includes, but is not limited to, such categories of information as medical
6 information, social security numbers, financial information, unlisted phone numbers, and other
7 nonpublic personal identifiers as are protected by statute, or personal information as protected
8 by Art. I, sec. 7 of the Washington Constitution;

9 B. Defendants' respective policies and procedures, and non-public business records
10 (which are proprietary and confidential business information, as contemplated by Fed.R.Civ.P.
11 26(c)(1)(G));

12 C. Defendants' respective records that identify non-parties and their personal
13 information, including, but not limited to other inmates, employees, and other non-parties; and

14 D. Proprietary software used by Defendants in business activities.

15 The Parties agree that designation of these categories as Confidential does not make any
16 particular document discoverable.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential material (as
19 defined above), but also (1) any information copied or extracted from confidential material; (2)
20 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
21 conversations, or presentations by parties or their counsel that might reveal confidential
22 material. However, the protections conferred by this agreement do not cover information that
23 is in the public domain or becomes part of the public domain through trial or otherwise.
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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
3 produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure
7 manner that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
9 by the court or permitted in writing by the designating party, a receiving party may disclose any
10 confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees of
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the receiving
14 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that
15 a particular document or material produced is for Attorney’s Eyes Only and is so designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation
17 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
25 A), unless otherwise agreed by the designating party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal confidential material
2 must be separately bound by the court reporter and may not be disclosed to anyone except as
3 permitted under this agreement;

4 (g) the author or recipient of a document containing the information or a custodian or
5 other person who otherwise possessed or knew the information; and

6 (h) insurance carriers and their claims representatives, for the purpose of analyzing and
7 valuing the potential claims.

8 4.3 Filing Confidential Material. Before filing confidential material or discussing or
9 referencing such material in court filings, the filing party shall confer with the designating party
10 to determine whether the designating party will remove the confidential designation, whether
11 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
12 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
13 standards that will be applied when a party seeks permission from the court to file material
14 under seal.

15 Pursuant to Section 6.3 below, where there is a challenge to the designation of a
16 document as Confidential, all parties shall continue to maintain the material in question as
17 Confidential until the Court rules on the challenge. If the parties are unable to resolve the
18 dispute, then the designating party may file and serve a motion to retain confidentiality, under
19 Local Civil Rule 7, within ten (10) days of the meet and confer. Failure to file a motion to
20 retain confidentiality within ten (10) days of the meet and confer may constitute a waiver of the
21 Confidential designation, unless good cause is shown.

22 The Parties are mindful that a decision to challenge a document may not be made until
23 shortly before a motion, response or reply is to be filed, so that there may not be adequate time
24 to resolve the issue, and if necessary, seek review from the Court. In that instance, the Parties
25 agree that the challenged documents will be submitted to the Court under seal, in accordance

1 with Local Civil Rule 5(g), until such time as the Court rules on the Confidential designation,
2 the type of document challenged, and the proper way to handle such document based on
3 admissibility of the document in the motion. Depending on the outcome of the designation
4 challenge, the Confidential document may then be subject to filing under seal upon the Court's
5 permission or direction.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
8 non-party that designates information or items for protection under this agreement must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. The designating party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify, so that other portions of the
12 material, documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
16 unnecessarily encumber or delay the case development process or to impose unnecessary
17 expenses and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it designated
19 for protection do not qualify for protection, the designating party must promptly notify all other
20 parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
23 ordered, disclosure or discovery material that qualifies for protection under this agreement must
24 be clearly so designated before or when the material is disclosed or produced.
25

1 (a) Information in documentary form: (e.g., paper or electronic documents and
2 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
4 contains confidential material. If only a portion or portions of the material on a page qualifies
5 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
6 making appropriate markings in the margins).

7 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
8 must identify on the record, during the deposition, hearing, or other proceeding, all protected
9 testimony, without prejudice to their right to so designate other testimony after reviewing the
10 transcript. Any party or non-party may, within fifteen days after receiving a deposition
11 transcript, designate portions of the transcript, or exhibits thereto, as confidential.

12 (c) Other tangible items: the producing party must affix in a prominent place on the
13 exterior of the container or containers in which the information or item is stored the word
14 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
15 the producing party, to the extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the designating party’s
18 right to secure protection under this agreement for such material. Upon timely correction of a
19 designation, the receiving party must make reasonable efforts to ensure that the material is
20 treated in accordance with the provisions of this agreement.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
25

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
5 regarding confidential designations without court involvement. Any motion regarding
6 confidential designations or for a protective order must include a certification, in the motion or
7 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
8 conference with other affected parties in an effort to resolve the dispute without court action.
9 The certification must list the date, manner, and participants to the conference. A good faith
10 effort to confer requires a face-to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. A party intending to file documents designated as Confidential
12 in support of a motion shall notify the designating party, in writing, of such intention. The
13 parties shall then meet and confer to attempt to resolve the challenge to confidentiality,
14 pursuant to Section 6.2 above. If the parties cannot resolve a challenge without court
15 intervention, the designating party may file and serve a motion to retain confidentiality under
16 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable) within ten (10)
17 days of the meet and confer. The burden of persuasion in any such motion shall be on the
18 designating party. Frivolous challenges, and those made for an improper purpose (e.g., to
19 harass or impose unnecessary expenses and burdens on other parties) may expose the
20 challenging party to sanctions. All parties shall continue to maintain the material in question as
21 confidential until the court rules on the challenge. Failure to bring a motion to retain
22 confidentiality within ten (10) days of the meet and confer may be considered a waiver of the
23 Confidentiality designation, unless good cause is shown.
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2 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
3 OTHER LITIGATION

4 If a party is served with a subpoena or a court order issued in other litigation that
5 compels disclosure of any information or items designated in this action as
6 “CONFIDENTIAL,” that party must:

7 (a) promptly notify the designating party in writing and include a copy of the subpoena
8 or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
10 other litigation that some or all of the material covered by the subpoena or order is subject to
11 this agreement. Such notification shall include a copy of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
13 designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this agreement,
17 the receiving party must immediately (a) notify in writing the designating party of the
18 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
19 protected material, (c) inform the person or persons to whom unauthorized disclosures were
20 made of all the terms of this agreement, and (d) request that such person or persons execute the
21 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

22 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

24 When a producing party gives notice to receiving parties that certain inadvertently
25 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 2 provision is not intended to modify whatever procedure may be established in an e-discovery
 3 order or agreement that provides for production without prior privilege review. Parties shall
 4 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each receiving
 7 party must return all confidential material to the producing party, including all copies, extracts
 8 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
 9 destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
 13 work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
 15 designating party agrees otherwise in writing or a court orders otherwise.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17
 18 DATED: 06/06/16

s/ Anthony Otto (via electronic consent)

19 Mr. Anthony Otto, WSBA No. 11146
 20 Attorneys for Plaintiff

21 DATED: 06/06/16

s/ Marc Rosenberg

22 Mr. Marc Rosenberg, WSBA No. 31034
 23 Attorneys for Defendants

24 Lee Smart, P.S., Inc.
 25 701 Pike Street # 1800
 Seattle, WA 98020
 mr@leesmart.com

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2

3
4 DATED: June 21, 2016



David W. Christel
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in
the case of *Robertson v. Kitsap County, et al*, Case No 15-cv-05422-RBL-DWC. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____